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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Authority to Increase its Authorized Revenues for Electric Service in 2021, among other things, and to Reflect that Increase in Rates.

Application 19-08-013

**ADMINISTRATIVE LAW JUDGES' RULING DENYING
SOUTHERN CALIFORNIA EDISON COMPANY'S MOTION
FOR INTERIM RATE RECOVERY**

Summary

This ruling denies Southern California Edison Company's (SCE's) motion for interim rate recovery of the recorded fire mitigation costs being considered in Track 2 of this proceeding, based on findings that interim rate recovery is not in the public interest, and that SCE failed to demonstrate why immediate rate recovery is needed to preserve its financial integrity. This ruling does not otherwise affect the continuation of this proceeding.

1. Motion for Interim Rate Recovery

On March 12, 2020, SCE filed a motion (SCE's Motion) for interim rate recovery with respect to its 2018-2019 Fire Mitigation Memorandum Accounts (Fire Mitigation MAs) currently being considered in Track 2 of Application (A.) 19-08-013. SCE's Motion seeks interim rate recovery of its full requested revenue requirement of \$500 million, starting June 1, 2020, subject to refund

upon the Commission's final determination at the conclusion of Track 2 of this proceeding.¹

In its motion, SCE argues that it is seeking interim rate recovery now to stabilize customer rates, and to avoid a system average rate increase of 2.45 cents per kilowatt hour over a short period in late 2020 and early 2021.² SCE further asserts that the proposed interim rate recovery will promote rate stability by spreading revenue increases to periods when rates are otherwise lower, and that customers would be protected against potential overpayment since SCE's request is limited to interim rate recovery for wildfire mitigation costs that SCE previously incurred, and which would be subject to refund.³

Second, SCE claims that interim rate recovery will promote cost causation and customer equity principles, as current customers would be responsible for 2018 through 2019 wildfire mitigation costs incurred on their behalf. In the absence of interim rate recovery, SCE argues that delaying cost recovery until the anticipated decision in Track 2, would "sever the temporal link between when SCE incurred the expenses and the cost recovery period from customers."⁴

Third, SCE asserts that interim rate recovery is needed to address current financial pressures affecting SCE; this includes current credit ratings below SCE's historical norms, as well as growing cash flow pressures, which SCE attributes to under-collected balances in the Fire Mitigation MAs as well as the insurance-related Wildfire Expense Memorandum Account. Should SCE's cash-flow situation continue to deteriorate, SCE asserts that it could potentially

¹ SCE Motion at 1.

² *Id.* at 3.

³ *Id.* at 7-9.

⁴ *Id.* at 9-10.

result in credit agency downgrades, making SCE's long-term financing options more expensive.⁵

Finally, SCE argues that its request is consistent with Decision (D.) 19-04-039, which approved interim rate recovery by Pacific Gas & Electric Company of certain wildfire-related costs.⁶

2. Responses to SCE's Motion

Responses to SCE's Motion were timely filed by The Utility Reform Network (TURN) and the Commission's Public Advocates Office (Cal Advocates) on March 27, 2020.

TURN argues that SCE fails to demonstrate that its request for interim rate recovery conforms to the standards previously articulated by the Commission for granting such extraordinary relief, based on the following grounds: First, TURN argues that raising rates in the summer (which would result from authorizing interim rate recovery) would result in greater potential bill impacts due to high summer consumption driven by air conditioning load. TURN claims this would be further exacerbated by SCE's request for immediate interim recovery of 100% of the associated fire mitigation costs, as opposed to a smaller percentage for interim recovery, as well as the ongoing economic uncertainty resulting from the COVID-19 health crisis.⁷ Second, TURN argues that granting interim rate recovery will not promote intergenerational equity principles, as much of the costs at issue in Track 2 relate to capital expenditures with long depreciation lives.⁸ Third, TURN claims that SCE has not made a persuasive

⁵ *Id.* at 11-15.

⁶ *Id.* at 10-11. Quotations from D.19-04-039 at 6.

⁷ TURN Response at 4-7.

⁸ *Id.* at 7-8.

case that the normal processing of this case will negatively impact its financial condition, especially given that SCE provides no supporting data or analyses to support its claims of financial risk and regulatory uncertainty. TURN further argues that the Commission has already established a specific schedule for Track 2 of the proceeding, which will have the proceeding submitted on November 13, 2020, leaving little “regulatory uncertainty” regarding the timing of cost recovery.⁹ Finally, TURN argues that it is concerned about the reasonableness of the costs SCE has included in its Fire Mitigation MAs, and believes these costs to be significantly different from other types of costs for which the Commission has previously authorized interim rate recovery.¹⁰

Cal Advocates also opposes SCE’s Motion, based on the following grounds: First, Cal Advocates argues that SCE has not demonstrated what it considers to be a necessary “emergency condition,” as established by *Toward Util. Rate Normalization v. Public Util. Com.* (*TURN v. P.U.C.*) (1988) 44 Cal.3d 870.¹¹ Second, Cal Advocates asserts that SCE has not sufficiently justified its current financial instability to warrant interim rate recovery, and provides no calculation or support for how the amount sought would impact SCE’s cost of capital or cash flow.¹² Third, Cal Advocates questions whether SCE’s request would “promote rate stability” since, by SCE’s own admission, without interim rate recovery the purported rate increase is nearly the same. Moreover, Cal Advocates states that SCE’s request would increase rates during summer months, which are more sensitive to “rate shock” impacts, and would occur at a time when the

⁹ *Id.* at 9-10.

¹⁰ *Id.* at 10-12.

¹¹ Cal Advocates Response at 2.

¹² *Ibid.*

Commission is actively working to mitigate the impacts to customers from statewide “stay at home” restrictions stemming from COVID-19.¹³ Fourth, Cal Advocates claims that, given the relatively expeditious schedule for Track 2 in this proceeding, there is not a “considerable period of time” between when cost expenditures were occurred and when they will be reflected in customers rates, which was a relevant factor in *TURN v. P.U.C.*¹⁴ Finally, Cal Advocates notes that, “[i]f the Commission is inclined to authorize some interim rate recovery...any such authorization [should] be limited to one-third of the requested revenue requirement amount of \$494.5 million, or \$164.8 million.”¹⁵

3. Motion to Stay

On March 27, 2020, the Small Business Utility Advocates (SBUA) filed a motion (SBUA’s Motion) to stay consideration of SCE’s motion for interim rate recovery until “the conclusion of the “shelter-in-place” order and assessment of the economic impact of the state’s closure on its citizens and businesses” as a result of COVID-19. SBUA asserts that, since SCE filed its motion, all but the most essential businesses have been shuttered, the entire state is under a shelter-in-place order, and unemployment has skyrocketed. SBUA reasons that at this time we do not know when all business will be allowed to reopen, nor the economic impact of the closures; however, SBUA claims that now is not the time to place additional costs upon California residents and small businesses.¹⁶

¹³ *Id.* at 3.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ SBUA Motion to Stay at 1-4.

4. SCE's Reply to Responses, and Response to SBUA's Motion to Stay

On April 6, 2020, and as authorized by the assigned Administrative Law Judges, SCE filed a reply to the responses of TURN and Cal Advocates and a response to SBUA's Motion.

In reply to TURN's response, SCE argues that interim rate recovery, when combined with the accelerated amortization of the pending Grid Safety and Resiliency Program settlement revenue requirement, is in the best interest of SCE's customers by smoothing rates. SCE also acknowledges the severity of COVID-19, but claims the existence of the current health crisis supports granting interim rate recovery, rather than undermining it, due to the additional protections that have been put into place for economically vulnerable customers, including the suspension of disconnections for nonpayment, waived late fees and deposits, and flexible payment plans.¹⁷

Regarding TURN's argument that interim cost recovery is unnecessary due to the significant portion of capital asset costs at issue in Track 2, SCE asserts that its Track 2 cost recovery request includes \$509 million in operation and maintenance (O&M) and *negative* \$18 million in capital-related revenue requirement; as such, the revenue requirement in Track 2 is being driven by O&M expenses, not capital costs, the majority of which relates to vegetation management.¹⁸

Finally, in reply to TURN's concern regarding the reasonableness of the costs included in SCE's Fire Mitigation MAs, SCE asserts that customers are completely protected against any overpayment since the relevant costs in SCE's

¹⁷ SCE Reply to Responses and Response to SBUA's Motion at 2-3.

¹⁸ *Id.* at 4.

Motion would be subject to refund. Further, the Commission has already approved SCE's 2019 Wildfire Mitigation Plan, and Track 2 concerns the relatively narrow issue of whether the costs incurred for important and necessary safety-related work were reasonable.¹⁹

In reply to the assertion by Cal Advocates that SCE has not demonstrated what it considers to be a necessary "emergency condition," as established by *TURN v. P.U.C.*, SCE argues that, in fact, the Supreme Court's decision reached the opposite conclusion,²⁰ finding that "In the present case, the commission was not faced with an 'emergency' in the sense of a threat to the utility's survival, but the situation was one in which fairness to both the utility and the public required immediate action."²¹

SCE also argues that it has sufficiently demonstrated cash-flow pressures supporting interim rate recovery. While SCE's Motion did not claim that it was facing an imminent financial emergency (nor, does SCE claim, is it required to), SCE asserts that it did detail the various financial pressures that SCE is facing which have only increased due to the emergent COVID-19 crisis. SCE reiterates that growing cash flow pressures could result in potential credit agency downgrades and more expensive long-term financing options should SCE's cash-flow situation continue to deteriorate. Further, the more than \$500 million of O&M at issue in SCE's Motion constitutes a substantial part of the \$1.1 billion cumulative under-collection balances currently in SCE's fire-related MAs.²²

¹⁹ *Id.* at 5-7.

²⁰ *Id.* at 7-8.

²¹ *TURN v. P.U.C.*, 44 Cal.3d at 879 (emphasis added).

²² SCE Reply to Responses and Response to SBUA's Motion at 9-10.

SCE asserts that Cal Advocates' proposal to limit interim rate recovery to a partial amount, should the Commission be inclined to authorize interim rate recovery, is necessary but not sufficient, since there is no "risk of ratepayer overpayments" for rate recovery that is subject to refund, and since full interim rate recovery is consistent with the intent behind Cal Advocates' proposal.²³

Regarding arguments by TURN and Cal Advocates that the Track 2 schedule in this proceeding already anticipates a Proposed Decision by the first quarter of 2021, SCE states that it incurred the wildfire mitigation-related costs in 2019 (and in some cases 2018) to protect customers, and as such finds it unjustified to impose a 2- to 3-year lag between when SCE incurred the expenses and rate recovery from customers, which under normal circumstances would be recovered in real-time.²⁴

Finally, in response to SBUA's motion to stay, SCE agrees that COVID-19 is an extraordinary crisis impacting everyone in the State, including SCE's small business customers; however, SCE argues that, given the additional customer protections in place today, if anything the current crisis makes SCE's interim rate proposal more necessary and appropriate to maintain SCE's financial stability in the service of its customers.²⁵

²³ *Id.* at 11.

²⁴ *Id.* at 4-5 and 10.

²⁵ *Id.* at 11-12.

5. Discussion

There is general agreement among parties that the Commission has the authority to grant interim rate recovery,²⁶ and that it has granted such relief under certain circumstances in the past.²⁷

As discussed in D.19-04-039, the decision to grant interim rate recovery is not limited to circumstances where failure to do so would result in a financial emergency.²⁸ In *TURN v. P.U.C.*, the Supreme Court recognized that the Commission had granted interim rate relief under that standard in the past, but noted: “however, it does not follow that no other circumstances can justify an interim increase.” (44 Cal.3d at 875.) D.19-04-039 goes on to state that the Commission has historically granted interim rate increases based on one or more of the following criteria: 1) to promote fairness to both the utility and public, 2) to reduce the potential for rate shock, and 3) to preserve the financial integrity of a utility, minimize costs incurred by ratepayers, and ensure rate stability.²⁹

Considering the above criteria, we find that SCE has failed to meet its burden of persuasion that interim rate recovery should be granted at this time. We reach this conclusion for the following reasons:

First, we disagree that granting the requested interim rate recovery is in the public interest, or is necessary to reduce the potential for rate shock and ensure rate stability. As noted by TURN and Cal Advocates, rate stability is impacted both by the amount of rate change as well as the timing in which rate changes occur. In this instance, SCE is proposing to implement an interim rate

²⁶ See *TURN v. P.U.C.*, (1988) 44 Cal. 3d 870.

²⁷ See D.88-05-074, D.02-07-031, D.16-08-003, and D.19-04-039.

²⁸ D.19-04-039 at 5-6.

²⁹ D.19-04-039 at 5-6.

increase during the summer months, which is more sensitive to “rate shock” impacts than winter rates, as summer consumption is driven by high air conditioning load.

SCE also argues that the customer protections put in place to address impacts from the stay-at-home order addressing COVID-19,³⁰ including the suspension of disconnections for nonpayment, waived late fees and deposits, and implemented flexible payment plans, actually support granting interim rate recovery.³¹ To be clear, the aforementioned customer protections were instituted as a means to support California customers during the ongoing COVID-19 pandemic, not support further rate increases. As stated by the Commission in Resolution M-4842, “these customer protections are a floor, not a ceiling. As we stated in D.19-07-015 and D.19-08-025, we support and encourage the utilities and communications service providers to do more to help Californians in this time of need.”³² SCE’s argument is further belied by recent Commission decisions designed to provide immediate *rate relief* during the COVID-19 pandemic, including reduced energy bills through early distribution of the California Climate Credit and short-term reductions to the electric high usage charge.³³

³⁰ On March 19, 2020, the Governor signed Executive Order N-33-20 requiring all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, in order to address the public health emergency presented by the COVID-19 disease. Executive Order N-33-20. Available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>. Last accessed May 7, 2020.

³¹ SCE Reply to Responses and Response to SBUA’s Motion at 3.

³² Resolution M-4842 at 4.

³³ See D.20-04-027 as well as the decision in A.19-09-014 adopted during the May 7, 2020 business meeting.

Second, we are unconvinced that interim rate recovery is needed to preserve SCE's financial integrity, and agree with both TURN and Cal Advocates that SCE fails to provide specific data or analysis to demonstrate otherwise. The schedule for Track 2 of this proceeding is clear, with a final decision contemplated in early 2021, leaving little basis for "regulatory uncertainty" regarding the timing of cost recovery. Other factors cited by SCE as they relate to California's risk profile, including heightened and increasing wildfire risk, the application of inverse condemnation, and the Commission's unclear and prolonged cost recovery process,³⁴ were recently considered and addressed in D.19-12-056, establishing the authorized cost of capital for utility operations for 2020.

6. Conclusion

SCE has not met its burden of persuasion that interim rate recovery should be granted. This ruling does not otherwise affect the continuation of this proceeding.

IT IS RULED that:

1. Southern California Edison Company's Track 2 Motion for Interim Rate Recovery filed on March 12, 2020 is denied.

³⁴ SCE Motion at 12.

2. The Small Business Utility Advocates' Motion to Stay Consideration of Southern California Edison Company's Motion for Interim Rate Relief filed on March 27, 2020 is denied as moot.

Dated May 22, 2020, at San Francisco, California.

/s/ EHREN D. SEYBERT

Ehren D. Seybert
Administrative Law Judge

/s/ SOPHIA J. PARK

Sophia J. Park
Administrative Law Judge